GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

MEMORANDUM

TO: Chairman Bill Ketron

FROM: Lucian Geise, Executive Director

DATE: July 15, 2013

RE: Enterprise and Bridgestone Contracts with the Department of General Services

Introduction

The News Channel 5 Investigates news team has issued numerous reports relative to contracts between the Department of General Services (the Department) and Enterprise Holdings, Inc. (Enterprise) and Bridgestone Retail Operations LLC (Bridgestone) beginning in May 2013. Members of the Fiscal Review Committee staff have reviewed the contracts and documentation related to these contracts provided by the Office of the Comptroller of the Treasury (the Comptroller), The University of Tennessee (the University), and the Department. Staff has also reviewed documentation posted on the News Channel 5 website. Staff did not find evidence in the documentation reviewed that any violation of state law has occurred. However, an emphasis on expeditiously completing procurements resulted in actions that may have reduced competition. The Department asserts that improvements have been made in the procurement process within the Department, including changes mandated by laws enacted by the General Assembly.

The Enterprise and Bridgestone contracts involve the Motor Vehicle Management Division (MVM) and MVM's responsibilities relative to the management and maintenance of State vehicles utilized by State departments, offices and agencies. The procurements were seen as efficient solutions to the issues of an aging MVM fleet of vehicles and the cost of both maintaining locations and employees for the repair and maintenance of vehicles in Nashville and ad hoc use of local repair and maintenance services throughout the state. The deteriorating condition and rising cost to maintain the 2200 Charlotte Avenue location in Nashville was cited as one reason for the need to take prompt action concerning the future of MVM operations. The desire of the Department to move MVM operations from this location by January 1, 2012, is noted in the

documentation. Tracts 1 and 2 of the property have been sold. Tract 3 is currently on the market.

Enterprise

The Enterprise contract was entered into by the Department through the cooperative purchasing authority granted by former Tenn. Code Ann. § 12-3-216. The original Preferred Rental Program contract is between the University and Enterprise and provides for preferred vehicle rental discounts and an eight percent rebate to the University if Enterprise vehicles are rented by University employees for business or personal use. An amendment authorizes Tennessee Board of Regents institutions (TBR) and departments, agencies, and municipalities of the State to also receive the preferred rental discounts. A participating addendum makes the discount rental program and a car sharing program (WeCar) available to all State departments, agencies and entities and their employees. Local governments are also authorized to participate. The State receives an eight percent rebate. The availability of the preferred rental and car sharing programs has replaced the MVM dispatch fleet previously used by state employees for travel.

The Department began to formally study the MVM Dispatch Program in March 2011 as part of an overall review of MVM that began in February 2011. Department staff met with representatives of Enterprise in May 2011 to discuss alternatives for the dispatch program. In June 2011, the Department contacted the University concerning the University's contract with Enterprise. The contract between the University and Enterprise was amended August 6, 2011, to extend the provisions of the contract to TBR, State agencies, and municipalities. A participating addendum to the contract entered into January 4, 2012, by Enterprise and the State, through the Department, expressly provides that Enterprise and the State agree to be bound by the original contract as amended and adds the car sharing program to the contractual agreement. In the participating addendum, Enterprise guarantees a minimum of 80 cars available for car sharing. The actual usage charge is deducted from the monthly rate. As of July 1, 2013, there were 56 vehicles on the lot. The number is set in response to State use and the State is charged only for the number of vehicles on the lot.

At the time the participating addendum was entered into, Tenn. Code Ann. § 12-3-216 authorized the Commissioner of General Services to enter into cooperative purchasing agreements with other states, local governments and higher education institutions if (1) each contract was established through the use of competitive sealed bids and (2) each procurement had the prior approval of the Board of Standards. The requirements of the statute were met. The University competitively procured the contract in late 2010 (negotiations continued into January 2011.) The Board of Standards approved the cooperative purchasing agreement in November 16, 2011. When questioned by staff of the Comptroller, the Department stated that the Department has always interpreted the prior approval requirement to apply to the Commissioner of General Services entering into the cooperative agreement and not to the underlying contract upon which the cooperative agreement is based.

It is not clear whether increased state savings or improved services would have resulted from a different procurement process. Although the Department has stated that the same vendors would have been included in the procurement, different vendors might have participated due to the added car sharing component. The scope of the initial procurement was a preferred rental discount program for University employees and a group rental discount program for alumni of the University. The University did not substitute the rental program for the University's fleet of vehicles. A procurement conducted by the State for a program to replace the MVM dispatch fleet could have resulted in a more beneficial contract because of potential greater volume and the different needs of the State.

The price comparison chart provided by the Department to the Board of Standards shows that in some cases the University rates were lower than other cooperative agreements and state contracts and in other cases higher. For instance, the University's mid-size car daily rates were lower than the Kansas and Western States Contracting Alliance (WSCA) Enterprise rates and Florida Avis rates but higher than the Indiana Enterprise rates and WSCA Hertz rates. The University of Tennessee compact and mid-size monthly rates were higher than all the other contracts compared except the compact and mid-size Kansas Enterprise rates (if the total eight percent rebate is factored in the University's compact and mid-size monthly rates would also be lower than the Florida Avis compact and mid-size monthly rates.) This rate difference would impact the cost of the WeCar sharing program. However, it cannot be reasonably stated with certainty based on the information reviewed that procuring the services in another manner at that time would have resulted in increased savings or improved services.

Bridgestone

The Bridgestone contract for repair and maintenance of State vehicles resulted from an Invitation to Bid procurement. The event details specify that the event was a "Best Value" Invitation to Bid Event/Source of Supply Event. The best value procurement methodology was authorized by former Tenn. Code Ann. § 12-3-218.

As stated above, the Department began an overall review of MVM in February 2011. Citing the deteriorating condition of the 2200 Charlotte Avenue facility and the limited volume of vehicles serviced by the facility, MVM recommended outsourcing maintenance of these vehicles and procuring a statewide contract for repair and maintenance of all vehicles under MVM jurisdiction in a report issued in May 2011. The Department of General Services estimated savings from the elimination of seven positions and the need to maintain repair and maintenance operations in a state owned or leased facility. In July 2011, the Department procurement process was underway. A July 7, 2011, pre-bid conference was rescheduled to July 11, 2011, to accommodate Bridgestone's inability to attend. E-mails between Bridgestone and the Department indicate that a dialogue concerning the forthcoming Invitation to Bid was conducted; but according to the Department, this type of dialogue occurs during procurements and is not unusual. No additional e-mails between the Department and other vendors were

produced. Four vendors were represented at the July 11, 2011, pre-bid conference. The Invitation to Bid was issued July 13, 2011, to bidders who were registered with the State and selected by Edison based on self-selected identifiers. The procurement was open for a week. The bids were evaluated on July 22, 2011. The list of potential bidders supplied by the Department contained a minority of bidders that appear to be able to provide statewide service. In addition, the specifications required bidders to be "primarily engaged in the business of providing vehicle preventative maintenance, safety inspections, and repair services." A number of the potential bidders are motor vehicle dealerships. Bridgestone submitted the only bid for the statewide contract. The Department decided to award the contract to the only bidder. The contract took effect August 1, 2011.

The Department issued an Invitation to Bid for these products and services on June 17, 2013. As of July 9, 2013, the procurement had not concluded. The new specifications require the bidder to have the ability to supply or perform products and services instead of requiring repair and maintenance to be the primary business of the bidder. The services sought are broken into categories. Bidders are required to bid on specific categories and to bid on a regional, rather than statewide, basis. Numerous potential bidders that were not included in the 2011 Invitation to Bid are included in the Invitation to Bid issued this year. These factors indicate that the current Invitation to Bid should result in a higher response rate and a more competitive procurement.

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

MEMORANDUM

TO: Chairman Bill Ketron

FROM: Lucian Geise, Executive Director

DATE: July 15, 2013

RE: Jones Lang LaSalle Contracts with the Department of General Services

The purpose of this memorandum is to summarize the results of the Fiscal Review staff's investigation into contracts entered into between the Department of General Services (DGS or the Department) and Jones Lang LaSalle Americas, Inc., (JLL) regarding state buildings. If you would like me to provide additional details or to have any information distributed at our meetings today, please call me at 741-9509.

At your request, Fiscal Review staff reviewed the events leading to the Department awarding two contracts to JLL. The first contract was for Facilities Assessment and Master Planning, and it has been modified by five amendments. The second contract was for Facilities Management. Based on our review, there is no evidence that the Department violated any law, policy, or procedure during the procurement of the contracts with JLL. The following summarizes the relevant facts.

In 2011, the General Assembly appropriated $1 million ($500,000 non-recurring from the General Fund; $500,000 recurring from the Facilities Revolving Fund) toward a statewide capital improvements master plan, including needs assessment and potential efficiencies.

In August 2011, DGS and Finance and Administration (F&A) issued a Request for Information (RFI) regarding consultant services for master planning, facilities assessment, and facilities management services. Six vendors submitted responses.

In September 2011, the State Building Commission (SBC) approved the Department's request for the development of a comprehensive statewide capital

improvements master plan that would encompass the needs of State facilities and programs throughout Tennessee. The DGS and F&A issued a broad Request for Proposals (RFP) in October 2011 for facility assessment, master planning and facility management services. Following review of responses from the three highest scoring vendors, the Department awarded the contract to JLL with a maximum liability of $1,000,000. The contract has been further modified by five amendments:

> Amendment 1. Expanded the scope of the contract to include Project T3 Leadership and Pre-Planning Tasks (June 2012). Increased maximum liability to $4.5 million.
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> Amendment 2. Allowed JLL to ask third parties for commissions from procuring and processing leases (November 2012). No change in maximum liability.
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> Amendment 3. Increased amount for pre-planning services (December 2012). Increased maximum liability to $5.65 million.
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> Amendment 4. Deleted Facility Management service provisions (as adopted by SBC), authorized facility assessment and master planning services, provided travel compensation for such services, and reflected additional funding for authorized services (December 2012). Increased the maximum liability to $6.65 million.
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> Amendment 5. Increased the maximum liability by $1 million and allows services to be procured by task orders (April 2013). Increased the maximum liability to $7.65 million.

In January 2013, DGS began procurement efforts for comprehensive real estate facilities management services and additional real estate services . The Department issued a Request For Qualifications to JLL and C.B. Richard Ellis, the top two technical scoring responders to the initial RFP. Upon recommendation of a special selection committee, composed of Mike Perry, Mark Cate and Larry Martin, a five-year contract was awarded to JLL with a maximum liability of $330 million in March 2013.